ing the slanderous words was introduced. The trial court was asked to instruct the jury that if they should find defendant to have been insane at the time of making the statements, such insanity would be an absolute defense. This charge was refused, verdict given for the plaintiff, and defendant appealed. *Held*, the instructions asked should have been given. *Irvine* v. *Gibson* (1904), — Ky. —, 77 S. W. Rep. 1106.

That the court in giving this decision was not entirely free from sympathy, may be inferred from this statement: "If God does not hold accountable for their misdeeds those whom he suffers to be thus afflicted, shall his creatures entrusted with the enforcement of human laws refuse to excuse their ostensible evil doing? Surely not." While the general rule that a person *non compos mentis* is liable for his torts is well established, a few early cases and several text-writers have considered slander to be an exception. COOLEY ON TORTS, 103; TOWNSHEND ON SLANDER AND LIBEL (3rd ed.) 476. The English rule is that insanity is no defense. ODGERS ON LIBEL AND SLANDER, 354. In the following cases usually cited to support the doctrine of the principal case it will be found that insanity was allowed to mitigate the damages and not as an absolute defense. *Dickinson* v. *Barber*, 9 Mass. 225; *Yeates* v. *Reed*, 4 Blackf. (Ind.) 463; *McDougal* v. *Coward*, 95 N. C. 368. The weight to be given to the case of *Bryant* v. *Jackson*, 6 Hump. (Tenn.), 199, may be judged from the following extract from the opinion, "That insanity is a good defense to this action (slander) *as well as all others* is not controverted." In *Horner* v. *Marshall*, 5 Munf. (Va.) 466, an injunction was granted restraining proceedings on a judgment obtained in a slander case because of defendant's insanity at the time of the publication. The theory upon which the decision in the principal case was based, is that an insane person is incapable of forming a malicious intent. This view is supported by COOLEY ON TORTS, 103, and by the case of *Gates* v. *Meredith*, 7 Ind. 440. However, since the presumption of malice arising from the publication of slanderous words by a person *compos mentis* cannot be rebutted except upon a plea of privilege, (NEWELL ON SLANDER AND LIBEL, 316; ODGERS ON LIBEL AND SLANDER, 264), the logic of this holding is not apparent. See on general topic of liability of an insane person for torts, 26 L. R. A., 153, note.

WILLS—CONSTRUCTION.—Counsel on both sides requested the court to construe the meaning of the word "between" in the following clause, "to be divided equally between the said survivor and our children." Appellee claimed that the word "between" referred to a division into two parts, thus giving the survivor half and the children as a class half. *Held*, that "between" should be construed to mean the same as "among" and that the property should be apportioned equally among the children and the survivor. *Edwards* v. *Kelly* (1903),—Miss.—,35 So. Rep.418.

This construction is undoubtedly more in accordance with the intentions of the testator than one founded upon an etymological difference in the meaning of the words "between" and "among." It is in accordance with what seems to be the weight of authority and the unquestionable trend of decisions. ROOD ON WILLS, §§ 486-489, and notes; *Johnson* v. *Knight*, 117 N. C. 122, 23 S. E. Rep. 92. *In re Morrison's Estate*, 138 Cal. 401, 71 Pac. Rep. 453. *Kling* v. *Schnellbecker*, 107 Ia. 636, 78 N. W. Rep. 673.

WILLS—UNDUE INFLUENCE.—Testator made a will disinheriting two of his sons, which was the result of undue influence exercised by the testator's

wife, and thereafter he made another will containing practically the same provisions as to the disinherited sons. *Held*, that such undue influence was available to defeat the second will, though exercised at a period remote from the date of its execution, and statements of the testator in regard to undue influence were admitted. *Powers' Ex'r. v. Powers* (1904)—Ky.—,78 S.W. Rep. 152.

Without citing a single supporting decision, this case runs counter to the general rule that the undue influence must be a present constraint operating at the time of executing the will. *Foster* v. *Dickerson*, 64 Vt. 233, 265. *In re Kaufman*, 117 Cal. 288, 59 Am. St. Rep. 179; *Pooler* v. *Cristman*, 145 Ill. 405, 34 N. E. Rep. 57; *In re Shell's Estate*, 28 Colo.167, 63 Pac. Rep.413, 89 Am. St. Rep. 181, 53 L. R. R. A. 387. The judge says that even though exercised years before, the undue influence must be considered fatal because it left so deep an impression upon the testator's mind. If it did make such a deep impression on his mind that convictions which had formerly been another's became his own, then the will was his and not another's, and there was no undue influence. For cases supporting the proposition that where at the time the testator made his will it was a correct expression of his desires, the influence exerted at some other time should be disregarded, see the note to *In re Hess's Will*, 31 Am. St. Rep. 675. Another questionable holding was that admitting in evidence statements made by the testator that he had been influenced, and that he had made the will and disinherited his sons in order to "keep down hell at home." The judge cited in support of this ruling the case of *Wall* v. *Dimmitt*, (Ky.) 72 S. W. Rep. 300; which on the point in controversy holds directly the other way and is in harmony with the general rule that the declarations of a testator, while competent to show the condition of his mind, are incompetent to prove undue influence. *Middleditch* v. *Williams*, 47 N. J. Eq. 585, 4 L. R. A. 738; *Appeal of Vivian*, 74 Conn. 257, 50 At. Rep. 797; *Earp* v. *Edgington*, 107 Tenn. 23, 64 S. W. Rep. 40.